

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EBONY MALCOM,

Plaintiff,
v.
JUDGE SHANNON WALKER, CATHY
MARIE GARRETT, Wayne County Clerk,
and Attorney RICHARD M. LYNCH,
Defendants.

Case No. 17-11140

HON. AVERN COHN

ORDER DENYING MOTION FOR RECONSIDERATION (Docs. 7, 8, 9)

I.

This is a prisoner civil rights case under 42 U.S.C. § 1983. Plaintiff Ebony Malcom proceeding *pro se* and without prepayment of the filing fee, sued Judge Shannon Walker, Wayne County Clerk Cathy Marie Garrett, and Attorney Richard M. Lynch. The Court dismissed the complaint for failure to state a viable claim. (Doc. 4).

Before the Court is plaintiff's motion for reconsideration. For the reasons that follow, the motion is DENIED.

II.

A motion for reconsideration which presents the same issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. To obtain reconsideration, Petitioner must not only demonstrate a palpable defect by which the court and the parties have been misled but also show that a different disposition of the case must result from a correction thereof. See E.D. Mich. LR 7.1 (h). A palpable defect is a defect that is obvious, clear, unmistakable, manifest, or plain. Witzke v.

Hiller, 972 F. Supp. 426, 427 (E.D. Mich. 1997).

III.

Here, plaintiff presents the same argument in her motion for reconsideration which was rejected by the Court. Specifically, plaintiff says that because defendants failed to respond to her filings in state court, her conviction must be reversed. As explained in the order of dismissal, a judgment in favor of plaintiff would necessarily require a finding that her continued confinement is the result of an invalid conviction. In Heck v. Humphrey, 512 U.S. 477, 486-87 (1994), the Supreme Court held such claims cannot be brought under section 1983.

Instead, a motion under 28 U.S.C. § 2254 provides the appropriate vehicle for challenging the fact or duration of a prisoner's confinement. The Court also cannot convert this matter into a 2254 motion; it must dismiss the complaint.

In short, plaintiff has not shown that the Court erred in dismissing the complaint.
SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: July 17, 2017
Detroit, Michigan